

SUBCOMMITTEE #3: Health & Human Services

Chair, Senator Mark Leno

**Senator Elaine K. Alquist
Senator Roy Ashburn**



April 29, 2010

**9:30 a.m. or
Upon Adjournment of Session
Room 4203
(John L. Burton Hearing Room)**

(Diane Van Maren)

AGENDA # 2

<u>Item</u>	<u>Description</u>	<u>Page</u>
4300	Overall Background	2 - 8
	Discussion Items	9 - 17

PLEASE NOTE:

Agenda #1 regarding the Administration's Plan for Lanterman will be discussed first.

Only those items contained in this agenda will be discussed at this hearing. Issues will be discussed in the order as noted in the Agenda unless otherwise directed by the Chair.

Please see the Senate File (available on-line) for dates and times of subsequent hearings.

Pursuant to the Americans with Disabilities Act, individuals who, because of a disability, need special assistance to attend or participate in a Senate Committee hearing, or in connection with other Senate services, may request assistance at the Senate Rules Committee or by calling 916-651-1505. Requests should be made one week in advance whenever possible.

Thank you.

Department of Developmental Services

A. OVERALL BACKGROUND (Pages 2 through 8)

Purpose and Description of Department. The Department of Developmental Services (DDS) administers services in the community through 21 Regional Centers (RC) *and* in state Developmental Centers (DC) for persons with developmental disabilities as defined by the provisions of the Lanterman Developmental Disabilities Services Act. Almost 99 percent of consumers live in the community, and slightly more than one percent live in a State-operated Developmental Center.

To be eligible for services, the disability must begin before the consumer's 18th birthday; be expected to continue indefinitely; present a significant disability; and be attributable to certain medical conditions, such as mental retardation, autism, and cerebral palsy.

The purpose of the department is to: **(1)** ensure that individuals receive needed services; **(2)** ensure the optimal health, safety, and well-being of individuals served in the developmental disabilities system; **(3)** ensure that services provided by vendors, Regional Centers, and the Developmental Centers are of high quality; **(4)** ensure the availability of a comprehensive array of appropriate services and supports to meet the needs of consumers and their families; **(5)** reduce the incidence and severity of developmental disabilities through the provision of appropriate prevention and early intervention service; and **(6)** ensure the services and supports are cost-effective for the state.

Description and Characteristics of Consumers Served. The department annually produces a Fact Book which contains pertinent data about persons served by the department. As noted below, individuals with developmental disabilities have a number of residential options. Almost 99 percent receive community-based services and live with their parents or other relatives, in their own houses or apartments, or in group homes (various models) that are designed to meet their medical and behavioral needs.

Department of Developmental Services—Demographics Data from 2008

<i>Table 1</i> Age	Number of Persons	Percent of Total	<i>Table 2</i> Residence Type	Number of Persons	Percent of Total in Residence
Birth to 2 Yrs.	26,559	12.4	Own Home-Parent	156,204	72.6
3 to 13 Yrs.	59,643	27.7	Community Care	26,744	12.4
14 to 21 Yrs.	36,989	17.2	Independent Living /Supported Living	18,802	8.7
22 to 31 Yrs.	30,716	14.3	Skilled Nursing/ICF	8,811	4.1
32 to 41 Yrs.	22,163	10.3	Developmental Center	2,891	1.3
42 to 51 Yrs.	21,229	9.9	Other	1,594	0.7
52 to 61 Yrs.	12,157	5.7			
62 and Older	5,590	2.6			
Totals	215,046	100.0	Totals	215,046	100.0

Background on State-Operated Developmental Centers. State Developmental Centers (DCs) are licensed and federally certified as Medicaid providers via the Department of Health Services. They provide direct services which include the care and supervision of all residents on a 24-hour basis, supplemented with appropriate medical and dental care, health maintenance activities, assistance with activities of daily living and training. Education programs at the DCs are also the responsibility of the DDS.

The DDS operates four Developmental Centers (DCs) — Fairview, Lanterman, Porterville and Sonoma. Porterville is unique in that it provides forensic services in a secure setting. In addition, the department leases Canyon Springs, a 63-bed facility located in Cathedral City. This facility provides services to individuals with severe behavioral challenges.

Background on Regional Centers (RCs). The DDS contracts with 21 not-for-profit Regional Centers (RCs) which have designated catchment areas for service coverage throughout the state. The RCs are responsible for providing a series of services, including case management, intake and assessment, community resource development, and individual program planning assistance for consumers.

RCs also purchase services for consumers and their families from approved vendors and coordinate consumer services with other public entities. Generally, RCs pay for services only if an individual does not have private insurance or they cannot refer an individual to so-called “generic” services that are provided at the local level by the state, counties, cities, school districts, and other agencies. For example, Medi-Cal services and In-Home Supportive Services (IHSS) are “generic” services because the RC does not directly purchase these services.

RCs purchase services such as **(1)** residential care provided by community care facilities; **(2)** support services for individuals living in supported living arrangements; **(3)** Day Programs; **(4)** transportation; **(5)** respite; **(6)** health care; and many other types of services.

Services and supports provided for individuals with developmental disabilities are coordinated through the *Individualized Program Plan (IPP)* (or the *Individual Family Service Plan* if the consumer is an infant/toddler 3 years of age or under). The IPP is prepared jointly by an interdisciplinary team consisting of the consumer, parent/guardian/conservator, persons who have important roles in evaluating or assisting the consumer, and representatives from the Regional Center and/or state Developmental Center. Services included in the consumer's IPP are considered to be entitlements (court ruling).

In addition, as recognized in the Lanterman Act, differences (to certain degrees) may occur across communities (Regional Center catchment areas) to reflect the individual needs of the consumers, the diversity of the regions which are being served, the availability and types of services overall, access to “generic” services (i.e., services provided by other public agencies which are similar in charter to those provided through a Regional Center), and many other factors. This is intended to be reflected in the IPP process.

Background—Transitioning to Community Services. The population of California's Developmental Centers has decreased over time. The development of community services as an alternative to institutional care in California mirrors national trends that support the development of integrated services and the reduced reliance on state institutions.

The implementation of the Coffelt Settlement agreement resulted in a reduction of California's Developmental Center population by more than 2,320 persons between 1993 and 1998. This was accomplished by creating new community living arrangements, developing new assessment and individual service planning procedures and quality assurance systems.

The United States Supreme Court decision in *Olmstead v L.C., et al* (1999) stated that services should be provided in community settings when treatment professionals have determined that community placement is appropriate, when the individual does not object to community placement, and when the placement can reasonably be accommodated.

Budget Act Language—Allows for Transfer Between Items. Finally, it should be noted that the annual Budget Act contains Budget Act Language which provides for the transfer of funds as necessary between the Developmental Centers Program and the Community Services appropriation (See provision 3 on page 345 of Senate Bill 874, as introduced). The purpose of this language is to enable the DDS to transfer funds, as appropriate, for individuals transitioning from a Developmental Center to the community.

Summary of Budget Act of 2009. The Governor proposed a \$334 million (General Fund) reduction, with a corresponding federal fund reduction, in 2009. The Legislature restored \$234 million (General Fund) of this amount in its February 2009 budget, thereby reducing expenditures by only \$100 million (General Fund).

As part of this February action, the Legislature directed the DDS to convene a diverse "workgroup" to assist in developing a collaborative approach in identifying cost reductions and efficiencies. A total of 15 proposals were identified through this process and trailer bill language was developed which was discussed and amended in this Subcommittee.

Unfortunately, the State's fiscal status deteriorated further and the Legislature was compelled by the Governor to reduce by another \$234 million (General Fund) to achieve the Governor's original proposal of reducing by \$334 million (General Fund).

In addition to the \$334 million (General Fund) reduction, with a corresponding federal fund decrease, the Governor vetoed an additional \$50 million (General Fund) from the Early Start Program and directed the CA First Five Commission (Proposition 10 Funds) to provide supplemental support. Such funding was just provided by the Commission on April 21, 2010.

As will be discussed today, the DDS is just beginning to obtain data in the current-year as to how these estimates are bearing out with respect to implementation and actual dollar savings. It should be noted that, in order to avoid a potential current-year deficiency, the DDS did a bottom-line adjustment to their estimate to reflect the savings target.

Special Session Actions (Eighth Extra-Ordinary) of 2010. On January 8, 2010, the Governor released his January budget, declared a fiscal emergency and called a Special Session consistent with Proposition 58 of 2004.

Among other things, the Governor proposed to extend for one-year (July 1, 2010 to June 30, 2011) a three percent reduction for certain payments for services purchased by Regional Centers for a reduction of \$99.5 million (\$49.7 million General Fund).

Exempt from this reduction are Supported Employment, the SSP supplement for independent living, and services with “usual and customary” rates as established in regulation. In addition, other services may be exempt from this reduction if a Regional Center demonstrates that a non-reduced payment is necessary to protect the health and safety of a consumer and the DDS has granted approval.

In addition, the Governor proposed to extend for one-year (July 1, 2010 to June 30, 2011) a three percent reduction to Regional Center Operations by continuing suspension of several administrative and case management requirements. This results in a reduction of \$16.2 million (\$11.2 million General Fund).

The Legislature adopted the Governor’s 3 percent reduction, with one administrative reporting change, for a total reduction of \$115.7 million (\$60.9 million General Fund) for 2010-11.

The Governor also proposed legislation to redirect a total of \$550 million (Proposition 10 Funds) to backfill for General Fund support in certain health and human services programs. A total of \$200 million (Proposition 10 Funds) was proposed for DDS to offset General Fund support in the Purchase of Services. The Legislature did *not adopt* the Proposition 10 proposal which would have required a vote of the people in June.

Summary of Budget Appropriation for the Department of Developmental Services.

The budget proposes total expenditures of \$4.823 billion (\$2.543 billion General Fund), for a *net* increase of \$168.2 million (total funds) over the revised current year for the entire developmental services system.

The Table below summarizes this information by program area.

Summary of Governor's January Budget for Department of Developmental Services

Program Component	2009-10 January Revised Total Funds	2010-11 January Total Funds	Difference
Community Services	\$4,016,449,000	\$4,178,440,000	\$161,991,000
Developmental Center Program	\$603,834,000	\$606,376,000	\$2,542,000
Headquarters Support	\$34,036,000	\$38,115,000	\$4,079,000
TOTAL, All Programs**	\$4,654,319,000	\$4,822,931,000	\$168,612,000
Regional Center Consumers	242,495	249,975	7,480
Developmental Center Residents	2,151	2,008	-143

** Includes Control Section 8.65 funds. This Control Section will be used as an offset to General Fund expenditures if California receives certain federal fund adjustments.

Community Services Funding. There are *two primary components* to the Community Services appropriation—Regional Center Operations, and the Purchase of Services. For Regional Centers' Operations a total of \$525.3 million (total funds) is proposed for 2010-11, or an increase of \$2.5 million (total funds) over the revised current year.

For the Purchase of Services, a total of \$4.148 billion (total funds) is proposed after accounting for several adjustments including the following: **(1)** continuation of the 3 percent reduction of \$99.5 million (total funds); **(2)** annualized affect of reductions from last year which total \$331.2 million (total funds); **(3)** additional reduction of \$25 million (General Fund) per the Governor; and **(4)** augmentation of \$50 million (placeholder) that may occur due to potential reductions to programs in other departments (such as IHSS). (The Governor's Control Section 8.65 is a stand-alone item and pertains to receipt of federal funds.)

The Table below provides a summary of the categories within the *Purchase of Services* funding. This Table reflects *baseline funding prior* to the application of cost-saving items and increases due to proposed impacts from other departments.

Summary of Regional Center Purchase of Services Funding (Total Funds)

Service Category	2009-10 Revised Current	2010-11	Increased Amount (Total Funds)
Community Care Facilities (CCFs)	\$808.2 million	\$826.8 million	\$18.6 million
Medical Facilities	\$24.6 million	\$24.9 million	\$223,000
Day Programs	\$847.1 million	\$905 million	\$57.9 million
Habilitation Services	\$146.5 million	\$143.5 million	-\$3 million
Transportation	\$241 million	\$250 million	\$9 million
Support Services	\$751.3 million	\$832.2 million	\$80.9 million
In-Home Respite	\$272.3 million	\$304.3 million	\$32 million
Out-of-Home Respite	\$65.5 million	\$71.6 million	\$6.1 million
Health Care	\$98.7 million	\$106.5 million	\$7.8 million
Self Directed Services	\$118,000	\$858,000	\$740,000
Miscellaneous	\$482.2 million	\$545.6 million	\$63.4 million
Early Start Program	\$20.1 million	\$20.1 million	--
Prevention Program	\$27.2 million	\$36.3 million	\$9.1 million
Agnews Developmental Center Shift	\$41.8 million	--	-\$41.8 million
Total Baseline (Prior to policy changes)	\$3.828billion	\$4.068 billion	\$240 million

Background—Summary of the Categories of Purchase of Services (POS). A brief description of the above-referenced POS categories is provided below:

- **Community Care Facilities (CCFs).** Regional Centers contract with CCFs to provide 24-hour non-medical residential care to children and adults with developmental disabilities who are in need of personal services, supervision, and assistance essential for self-protection or sustenance of daily living activities.
- **Medical Facilities.** The Regional Centers vendor Intermediate Care Facilities (ICF) for consumers *not* eligible for Medi-Cal. The types of ICFs providing services to individuals with developmental disabilities are: ICF-DD (Developmentally Disabled), ICF-DD-H (Habilitative), ICF-DD-N (Nursing), and ICF-DD-CN (Continuous Nursing). (The Department of Health Services operates the Medi-Cal Program and directly reimburses those ICF providers who serve individuals with developmental disabilities who are eligible for Medi-Cal.)
- **Day Programs.** Day Programs are community-based programs for individuals served by a Regional Center. Day Programs are available when those services are included in a person's Individual Program Plan (IPP).
- **Habilitation Services Program.** This area includes the Work Activity Program and the Supported Employment Program. These programs provide opportunities for individuals with developmental disabilities to work.
- **Transportation.** Regional Centers contract with vendors to provide transportation services when other modes of transportation, such as family, public, self-directed, cannot be appropriately accessible.
- **Support Services.** Regional Centers contract with vendors to provide services and supports which include a broad range of services to adults who live in homes they themselves own or lease in the community.
- **Respite Services (In-Home and Out of Home).** Regional Centers contract with vendors to provide respite services to provide support to family members.
- **Health Care.** Regional Centers contract with vendors to provide health care services that are medical and health care related.
- **Self-Directed Services.** Enacted in 2005, these services are designed to be individually customized to meet the needs of the participant. Individuals eligible to receive Self-Directed Services cannot reside in or receive Day services in group settings. There are 75 enrollees in 2009 and an additional 1,725 people are expected to enroll in 2010-11.
- **Miscellaneous Services.** These services are a broad category and include tutors, special education teacher's aides, recreational therapists, speech pathologists, mobility training specialists and counseling.
- **Early Start.** This program provides services to eligible infants and toddlers from birth up to age 3.
- **Prevention Program.** This program was enacted in 2009 to provide a prevention program for at-risk infants and it will focus primarily on providing intake, assessment, case management, and referral to generic agencies for children through 35-months.

Previously these infants and toddlers were provided services under the Early Start Program.

- **Agnews Developmental Center Shift.** This category of funding was used to identify expenditures for the Agnews Unified Community Placement Plan (for the three Bay Area Regional Centers) to close Agnews. The expenditure for the current-year reflects costs associated with consumers transitioned to the community in 2008-09. For 2010-11 these costs will transition to the overall Regional Center POS line item.

Developmental Centers Funding. The revised 2009-2010 reflects a decrease of \$69.4 million (\$30.7 million General Fund) from the Budget Act of 2009 (July) due to furloughs and overtime/holiday reductions. In addition, 233.8 positions (some partial year) were reduced due to a decrease in residents, including the closure of Agnews (March 2009) and Sierra Vista (December 2009).

For 2010-11, the budget reflects a decrease in residents of 143 consumers (from 2,151 consumers to 2,008 consumers). A total of \$606.4 million (\$309.7 million General Fund) is proposed for expenditure.

The Developmental Centers will be discussed in more detail at the May Revision since resident caseload will be updated, along with the Lanterman Plan.

(Discussion Items begin on next page.)

B. Items for Discussion: Community-Based Services

1. Informational Item: DDS Update on Current-Year Adjustments

Fiscal Update. As referenced above, a series of actions were taken in the Budget Act of 2009 (July) based on the Governor's direction to identify \$334 million in General Fund reductions, along with corresponding federal fund reduction, within the overall DDS area.

The DDS *Hand Out* provides a summary of these actions and anticipated reductions per issue, as estimated in July 2009. (Attached to "hard copy" of this Agenda, and can be obtained electronically from DDS website.)

In the DDS Work Group meeting of *April 19, 2010*, the DDS provided an update on current year implementation.

Key aspects of this April 10, 2010 DDS briefing are as follows:

- **General Observations.** DDS is monitoring the reduction proposals based on actual data that is being received. A more comprehensive update will be available at the Governor's May Revision. But, the general observation is that reductions were achieved when limits or restrictions were enacted. Those proposals that were optional, often did not achieve the estimated reduction.

DDS also asserts that in some instances, confounding factors—such as the birth rate being down by 6.9 percent from the last two years-- play a role in discerning the full impact of some of the reductions due to various interrelated factors.

- **Federal Fund Proposals (\$78.8 million GF saved with Federal Funds).** Four items were associated with the receipt of these additional federal funds. DDS should provide a *brief overall update* on the receipt of these federal funds, as well as step-through preliminary, draft trailer bill language regarding the ICF-DD rate issue (billing process).
 - **Additional Services Under Home & Community-Based Waiver (\$13 million).** The DDS obtained federal CMS *approval* to add additional services, such as day care, to this Waiver. No issues have been raised.
 - **Implementation of a "1915 (i)" State Plan Amendment (\$60 million).** This is a new method offered by the federal government in 2005 for covering Home and Community-Based services for Medi-Cal enrollees beginning in January 2007.

This amendment has been submitted to the federal CMS and is pending discussions. Under this amendment, individuals enrolled in Medi-Cal but not presently eligible for the Home and Community-Based Waiver (i.e., not at risk for institutionalization) would be enrolled under the Waiver (and the State would receive additional federal funds). No issues have been raised at this time.
 - **Intermediate Care Facility-DD State Plan Amendment. (\$4.6 million).** This amendment would reconfigure the rate paid to Intermediate Care Facilities for persons with Developmental Disabilities. Specifically, the DHCS and DDS would

use an “all inclusive” rate to capture transportation, Day Program, and related assistance within the ICF-DD rate to bill additional federal funds. This will also be done for Skilled Nursing Facilities under a similar State Plan Amendment which has to be filed separately.

This issue was first proposed in the Budget Act of 2007, and the federal CMS approval will honor past expenditures for California (as such no GF loss). The baseline amount is \$44 million (federal funds) and has been previously accounted for in prior years (pending CMS approval).

This technical billing issue will require trailer bill language for implementation. DDS has provided *preliminary, draft* language for this purpose (*Hand Out*). This language needs to be discussed today.

- **Downsize Large Residential Facilities (\$1.2 million).** Under this action, Regional Centers will not *newly* vendor large facilities (16 beds or more) which do not qualify for federal funds (Medi-Cal) because of their institutional setting. by July 1, 2012, Regional Centers will not be able to purchase services from these existing facilities unless certain conditions are met as specified in statute.

DDS states this is progressing. DDS should provide a *brief update*.

- **Early Start Program: Eligibility Criteria & “At Risk” Program (\$35 million).** Several changes were made to the Early Start Program (birth to age 3) including the following:

- *Regional Center Operations (\$2.1 million).* Reduce staff due to change in criteria. This was achieved.
- *Eligibility Criteria (\$15.5 million).* As of July 1, 2009, toddlers aged 24 months need to have a delay of 50% or greater in one domain, or, 33% or greater in two domains to enter the program. Previously, it was a delay of 33 percent or greater in one of the five domains.
- *Prevention Program (\$19.5 million).* As of October 1, 2009, infants and toddlers who are ‘at risk’ are no longer eligible for Early Start but can participate in a new Prevention Program (non-Lanterman Act). Each Regional Center is to receive a finite allocation to provide intake and assessment, case management, and referral to appropriate generic resources (such as Medi-Cal, California Children Services, and others) for these toddlers.

DDS states that these reductions in Early Start are being achieved but it may be somewhat attributable also to the reduction in births.

DDS should provide *brief comment* on these interactions and the Early Start Program.

- **Behavioral Services Standards (\$19.3 million).** Under this action, specific standards for the purchase of behavioral standards by Regional Centers was implemented. DDS states this service category continues to grow but that the rate of growth has slowed. DDS anticipates some reduction will be achieved but they are doubtful it will achieve the estimated amount. DDS should provide a *brief update*.

- **General Standards (\$45.9 million).** Under this action, Regional Centers are to follow certain specified standards for authorizing the purchase of services, such as using generic services first when available, not purchasing experimental treatments, and using the least costly vendor for a service if this vendor otherwise meets needs identified in the person's Individualized Program Plan (IPP). DDS states that since these standards affect most of the service delivery system, it is not feasible to individual ascertain the affects of these changes. However, DDS notes that Regional Center expenditures for the current-year are within the appropriation. DDS should provide a *brief update*.
- **Temporarily Suspend Services (\$27.4 million).** Certain services were temporarily suspended pending development of the Individual Choice Model, a new service delivery model that offers flexibility in services within a defined budget. The suspended services included: (1) camp; (2) social recreation; (3) education services for minor children; and (4) non-medical therapy. This suspension of services will be lifted upon certification of the DDS that the Individual Choice Budget has been implemented as specified.

Though reductions have been achieved in these areas, DDS notes there are a significant number of Fair Hearings filed to receive these services. The outcomes from many of these hearings are still impending. DDS should provide a *brief update* on this issue.

- **Expansion of In-Home Respite Agency Worker Duties (\$3 million).** DDS states they have not yet received any applications for the provision of incidental medical services by Respite Agencies as described above. As such, no reduction has resulted.

Under this proposal, "In-Home" Respite Agency employees would include certain additional services, *as appropriate*, in their duties. By having In-Home Respite Agency employees perform these services, it is assumed that less respite hours would need to be provided by Home Health Agencies and Licensed Vocational Nurses which are more expensive.

The intent of this proposal was to have non-licensed respite workers provided training by licensed health care professionals to be able to perform incidental medical services as follows: (1) Colostomy and ileostomy-- changing bags and cleaning stoma; (2) Urinary catheter-- emptying and changing bags; and (3) Gastrostomy-- feeding, hydration, cleaning stoma, and adding medication per physician's or nurse practitioner's orders for the routine medication of patients with stable conditions.

This proposal was to achieve a reduction of \$4 million (\$3 million General Fund). This level of savings assumed the following:

- Reduction of 10 percent in the number of respite hours purchased from Home Health Agencies and Licensed Vocational Nurses.
- Corresponding increase of 10 percent in the number of respite hours purchased through In-Home Respite Agencies.
- Increase of \$0.50 per hourly wage (limited to hours providing "skilled" respite services), *plus* a 16.76 percent increase for the employer costs due to the wage

increase (for social security, worker's compensation, unemployment compensation), for In-Home Respite Agencies (employees and employer as noted).

- Assumes Regional Centers may reimburse In-Home Respite Agencies up to \$200 semi-annually for providing training to its employees for the additional services to be conducted.

- **Respite Program—Temporary Service Standards (\$4.2 million General Fund), and Early Start Program: The Change in Federally Required Services (Respite) (\$4.2 million).** DDS states they have seen a decline in the number of consumers accessing respite services. They note there has been a flattening out of the projected growth in these two budget categories and it is not fully possible to discern the impact of each factor separately. Some of the key factors in the decline of consumers accessing respite services as noted by the DDS included the following:

- Less enrollment in the Early Start Program (birth rate down and the change in eligibility);
- The increase in the Family Cost Participation Program (done in 2008-09) could be dampening the growth since parental participation for respite services were increased (in some cases up to 100 percent for higher income families).
- Other changes, such as increased internal reviews by Regional Centers including use of generic resources, increased parental responsibilities, and other items enacted in 2008 probably had some affect.
- The poor economy has resulted in job losses and people possibly staying at home.

DDS conducted a survey of Regional Centers and analyzed Purchase of Services data and it appears that about \$19.6 million will be achieved from this area.

DDS should provide more detail regarding the application of the enacted legislation from 2009, and the various factors that could be affecting expenditures and growth in this area.

- **Custom Endeavors Option (CEO) (\$12.7 million).** DDS state that only 6 consumers are participation in this new program and the reduction level had assumed that 2,583 consumers would participate. Therefore only minimal savings is being achieved.

Under this proposal, a Day Program provider would offer this customized program to a consumer in lieu of their current program. This alternative would be based on a consumer's Individualized Program Plan (IPP).

The reduction level assumed that 5 percent of current consumers would opt out of their existing Day Program and select this alternative. Of those estimated to choose this alternative, half of the consumers would receive 20 hours of services per month and the other half will receive 80 hours of services per month.

The Day Programs affected by this option include: (1) Community Integration Training; (2) Community Activities Support Services; (3) Activity Center; (4) Adult Development Center; and (5) Behavior Management Program.

- **New Services for Seniors (\$1 million).** DDS state that only 5 consumers are participating and it was assumed that 424 would participate in order to obtain the savings. Therefore only minimal savings is being achieved.

The intent of this program is that some aging consumers presently participating in Day Programs would want to “retire” or participate in less intensive services. Under this program individuals desiring a less rigorous Day Program, would be able to choose this alternative. This new program component would be reimbursed at a reduce rate and would have a *lower* staff to consumer ratio of 1 to 8 (as compared to a 1 to 3, 1 to 4, or 1 to 6).

Questions. The Subcommittee has requested the DDS to respond to the following questions:

1. DDS, Please provide a brief overview of the current-year regarding the changes enacted in the community-based services area.
2. DDS, Please speak specifically to the key current-year items outlined in this Agenda, *and* provide a perspective as to how the DDS is keeping abreast of trends and analyzing data.
3. DDS, Please provide your perspective on Respite services and the Regional Center survey information.
4. DDS, Please step through the key aspects of the proposed trailer bill language for the technical billing issues on the ICF-DD. (Pages 9-10 of the Agenda.)

2. Governor's Proposal to Reduce by Additional \$48.2 million (\$25 million GF)

Budget Issues. The Governor's January budget reflects several key adjustments to the local assistance appropriation which is used to fund Purchase of Services (POS) expenditures managed by Regional Centers and Regional Center Operations.

As referenced above, the Governor's January budget assumes **(1)** continuation of the 3 percent reduction on certain payments for services purchased by Regional Centers; **(2)** continuation of the 3 percent reduction on Regional Center Operations; and **(3)** continuation of various other reductions as adopted in the Budget Act of 2009, and referenced above.

In addition to these, the Governor is proposing a reduction of \$48.2 million (\$25 million General Fund) by increasing the 3 percent reduction on *both* the Purchase of Services and Regional Center Operations by *another* 1.25 percent for a total of 4.25 percent on each.

Of the proposed \$48.2 million (\$25 million General Fund) reduction, about 82 percent, or \$39.3million (total funds) would be from POS. The remaining amount of about \$8.9 million would be from Operations.

The DDS states they are analyzing options for providing administrative relief to providers to assist in mitigating the additional 1.25 percent reduction to POS expenditures. This information has not yet been provided to constituency groups or the Subcommittee.

DDS also states the existing exemptions for Supported Employment, the SSP supplement for independent living, and services with "usual and customary" rates as established in regulation are not proposed to change. In addition, other services may be exempt from this reduction if a Regional Center demonstrates that a non-reduced payment is necessary to protect the health and safety of a consumer and the DDS has granted approval.

Subcommittee Staff Recommendation. It is recommended to hold this issue "open" pending receipt of the May Revision, and to redirect the DDS to provide the Budget Work Group, other interested parties and the Subcommittee with additional information regarding the proposed "administrative relief" for providers.

Questions. The Subcommittee has requested the DDS to respond to the following questions:

1. DDS, Please provide a brief summary of how the additional 1.25 percent reduction on POS expenditures and Regional Center Operations would affect services.
2. DDS, What is being anticipated as far as providing "administrative relief" for providers?

3. Transportation Funding: General Fund Backfill in lieu of Public Transit Funds

Budget Issue. As proposed by the Governor, the Budget Act of 2009 (July) appropriated \$138.3 million (Public Transportation Account Funds) to backfill for General Fund support in the DDS for transportation services provided to consumers. The Administration contended expenditure of these funds, derived primarily from sales taxes on gasoline and diesel fuels could be used for this purpose and met the intent of Section 14506 of the Government Code for expenditure.

However, the recent *Shaw v. Chiang* decision denied the expenditure of the Public Transportation Account Funds for this purpose, as well as for certain other General Fund expenditures.

The Joint Legislative Budget Committee (JLBC) has been notified by the Department of Finance (DOF) of this court ruling and of a current-year deficiency request of \$131.1 million (General Fund) within the DDS budget resulting from this action. The DDS was able to offset \$7.2 million of the \$138.3 million loss through a fund shift resulting from the receipt of increased federal funds in the Early Start Part C grant.

The DOF states in their notification that \$131.1 million (General Fund) will be forthcoming through a supplemental appropriations bill for the current-year.

Receipt of this General Fund backfill is assumed for 2010-11.

Subcommittee Comment and Recommendation. The *Shaw v Chiang* decision negates the use of the Public Transportation Account for all transportation services for consumers, including specialized transportation, transportation services to Day Programs, transportation to employment, and for other consumer services and supports.

If funds are not provided before the end of the fiscal year (June 30, 2010), it would be likely that the State would be in violation of the Lanterman Act, as well as the "Olmstead" decision since consumers would not be able to appropriately access their services.

It is recommended for the Subcommittee to advise the JLBC of the importance of this funding and to recommend its approval to them.

Questions. The Subcommittee has requested the DDS to respond to the following questions.

1. DDS, Please explain why the \$131.1 million (General Fund) is needed.
2. DDS, If these funds are not appropriated until after June 30, what may occur and what concerns may providers have?

4. Request for State Staff to Increase Federal Funds Participation

Budget Issue. The DDS is requesting an increase of \$515,000 (\$228,000 General Fund) for five two-year limited-term positions to capture additional federal funds and to **(1)** implement the 1915 (i) State Plan Amendment; **(2)** implement billing changes associated with the ICF-DD and Skilled Nursing changes regarding transportation; and **(3)** future issues related to the pending 1115 Medi-Cal Waiver.

As has been discussed, a key component to sustaining the developmental services system is to obtain additional federal funds. DDS states they will generate about \$79 million in additional federal funds for 2009-2010, and \$132.5 million for 2010-11. Most of these increases are due to the new 1915 (i) State Plan Amendment and the ICF-DD changes.

Specifically, the DDS is requesting the following positions:

- **Career Executive Appointment II.** This position would work with the federal CMS and the DHCS to develop and implement the 1915 (i) State Plan Amendment, and the pending 1115 Medi-Cal Waiver being developed by the DHCS. The DDS states a CEA position is needed due to the tremendous breadth of experience and knowledge required with understanding California's developmental services system and the complexities of federal Medicaid law. This position will have responsibility for the policy, program, and day-to-day operations of these new federal programs within DDS and the community service system.

Key activities would include the following:

- Directing policy and technical crafting of the federal 1915 (i) State Plan Amendment, a State Plan Amendment for Skilled Nursing Facility residents, and the development of the DDS infrastructure to maximize federal financial participation.
 - Working with the DHCS, Regional Centers, and various stakeholders on issues arising from the development of the DHCS 1115 Waiver and its implementation.
 - Directing implementation of the internal and community infrastructure needed to carry out the new functions DDS will assume in order to maximize federal financial participation.
 - Representing DDS in negotiations with the federal CMS.
- **Staff Services Manager I.** This position will directly supervise three staff and will do the following:
 - Negotiate and implement contract changes with Regional Centers for policy and program changes;
 - Oversee the development and review of systems and procedures for implementation;
 - Ensure that all claiming, billing and payment of Medi-Cal funds comport with federal and State statute and regulations;

- Assist the CEA in responding to constituency groups, inquiries from the federal CMS and DHCS, and provide critical information to the Legislature;
- Supervise, guide and train three staff.
- **Two Community Program Specialists II's.** These positions will work under the direction of the CEA and Staff Manager I to development, implement and conduct day-to-day operations of new administrative and payment mechanisms for capturing the federal funds. DDS will be assuming responsibilities for claiming, billing and payment of Medi-Cal funds associated with the ICF-DD and Skilled Nursing transportation issue. (Discussed in issue #1 of this Agenda.)

These positions will also provide assistance with implementation of the 1115 Medicaid Waiver as applicable.

- **Research Program Specialist I.** This position will employ research methodologies and statistical procedures to design and implement program and fiscal analyses of these new programs and to develop and prepare complex data analyses and reports, including for the federal CMS. They will conduct research and statistical modeling of rates and rate methodologies relative to controlling General Fund expenditures and maximizing federal funds in these programs and on an ongoing basis.

Background—1915 (i) State Plan Amendment. DDS submitted this Amendment and which as been approved by the federal CMS and is retroactive to October 2009. This will enable California to obtain federal funds for individuals living in the community who are not at-risk for institutionalization and cannot be presently placed on the existing Home and Community-Based Waiver. Additional services will be eligible for reimbursement as well.

Subcommittee Staff Comment and Recommendation. Due to the magnitude of work to be accomplished, as well as the complexity, it is recommended to approve the DDS request for positions. It is critically important to obtain these federal funds to achieve General Fund savings and to ensure that services are available and that providers are paid appropriately. The federal CMS will be closely monitoring California and all requirements will need to be met.

Questions. The Subcommittee has requested the DDS to respond to the following questions:

1. DDS, Please provide a brief summary of the request.